

INITIAL APPEARANCE/ARRAIGNMENT ON AN INDICTMENT/INFORMATION

*[Use this form **only** if the defendant has not appeared previously in federal court in this district on this/these charge(s) and is charged in an indictment or information.]*

[Note: *If you have any doubts about the defendant's ability to speak and understand English, then consider using a certified interpreter in accordance with 18 U.S.C. § 1827. If a certified interpreter is used, then no record needs to be made about the interpreter's qualifications. Be sure to swear the interpreter.*]

1. "This is the case of the United States of America versus (*name of defendant*). You are (*defendant's name*)? I am (*state your name*)."
2. *[Tell the defendant]* "You've been charged in an indictment/information with

[Here are some examples.]

- (a) conspiracy to manufacture/distribute (*name of drug*)."
- (b) possession of (*name of drug*) with the intent to distribute."
- (c) unlawfully reentering the United States after you were deported."
- (d) possession of a firearm after having been convicted of a felony."
- (e) possession of a firearm while being an unlawful user of drugs."
- (f) possession of a firearm after having been convicted of a domestic abuse charge."

"Do you have a copy of the indictment/information?" *[If not, make sure a copy of the indictment/information is provided to the defendant.]*

3. *[Ask the prosecutor]* "Has the defendant had an initial appearance in this district?" *[If "no," then go to paragraph 4. If "yes," then go to paragraph 10.]*

4. *[Tell the defendant]* “I now will advise you of certain of your constitutional rights.”
5. “You have the right to remain silent. This means you don’t have to say anything to anyone. If you give up that right and make a statement, the prosecutor can, and probably will, use everything you say against you. Therefore, I strongly suggest that you not say anything to anyone unless you and your lawyer decide it’s in your best interests to do so. If you’ve already given a statement, you don’t have to say anything further. If at any time you decide to go ahead and make a statement, you have the right to stop at any time.”
6. “Do you understand your right to remain silent?”
7. “You also have the right to be represented by a lawyer at every stage of these proceedings. If you need some time to find a lawyer, I’ll give you that time. If you want a lawyer but don’t have the money to hire one, I’ll appoint one to represent you. If I appoint a lawyer to represent you, the court would pay the lawyer’s fees and expenses, but the lawyer would represent only you and your interests in the case.”
8. “Do you understand your right to have a lawyer represent you in this case even if you don’t have the money to pay for one?”
9. “Do you have the money to hire your own lawyer?” *[If “yes,” then go to paragraph 9(c). If “no,” then say]* “Would you like me to appoint a lawyer to represent you at no expense to you?” *[If “yes,” then ask]* “Has the defendant completed a financial affidavit?” *[and go to paragraph 9(a) or 9(b), as appropriate. If “no,” then go to paragraph 9(d).]*

(a)[If a completed financial affidavit is available, then review the financial affidavit and say one of the following things.]

(1) [*If a panel attorney or federal defender is present and the defendant qualifies for court-appointed counsel, then say*] “I’ve reviewed the defendant’s financial affidavit, and find that (s)he’s entitled to court-appointed counsel. I appoint (*name of attorney*) to represent the defendant). Is defense counsel prepared to proceed with the arraignment?” [*If “yes,” then go to paragraph 10. If “no,” then go to paragraph 15.*]

(2) [*If an attorney is not present and the defendant qualifies for court-appointed counsel, then say*] “I’ve reviewed the defendant’s financial affidavit, and find that (s)he’s entitled to court-appointed counsel. I direct the Clerk of Court to appoint a lawyer to represent the defendant either from the federal defender’s office or from the panel of lawyers qualified to handled this type of case.” [*Go to paragraph 15.*]

(3) [*If the defendant does not qualify for court-appointed counsel, then say*] “I find the defendant is not entitled to court-appointed counsel based on (*state reason, such as level of income or available assets*).” [*Ask the defendant about his/her plans for retaining an attorney; then, go to paragraph 15.*]

(b) [*If no completed financial affidavit is available, then say one of the following things.*]

(1) [*If a panel attorney or federal defender is present, then say*] “I hereby appoint (*name of attorney*) to represent the defendant.” [*Then say*] “This appointment is subject to my review of a completed financial affidavit, which is to be submitted to me within the next 48 hours.” [*Tell the defendant*] “You should understand that the information you provide on the affidavit is subject to the penalties of perjury. This means you could be prosecuted for perjury if you give false information on the affidavit.” [*Then ask the attorney*] “Are you prepared to proceed with the arraignment?” [*If “yes,” then go to paragraph 10. If*

“no,” then say] “The arraignment in this case is scheduled for (schedule arraignment).” [Go to paragraph 15.]

(2) [If an **attorney is not present**, then say] “I hereby direct the Clerk of Court to appoint a lawyer to represent the defendant from the list of lawyers qualified to handle this type of case.” [Then say] “This appointment is subject to my review of a completed financial affidavit, which is to be submitted to me within the next 48 hours.” [Tell the defendant] “You should understand that the information you provide on the affidavit is subject to the penalties of perjury. This means you could be prosecuted for perjury if you give false information on the affidavit.” [Then say] “The arraignment in this case is scheduled for (schedule arraignment).” [Go to paragraph 15.]

(c) [If the defendant does not want the court to appoint an attorney for her/him **because (s)he has hired or intends to hire an attorney**]

(1) [If **the attorney is present**, then say] “Is defense counsel prepared to proceed with the arraignment?” [If “yes,” then go to paragraph 10. If “no,” then say] “The arraignment in this case is scheduled for (schedule arraignment)” and go to paragraph 15.]

(2) [If **the attorney is not present or has not yet been retained**, make a record on the subject, and then say] “The arraignment in this case is scheduled for (schedule arraignment)” and go to paragraph 15.]

(d) [If the defendant does not want the court to appoint an attorney for her/him **because (s)he wants to represent him/herself**, then say] “Although you may have a constitutional right to represent yourself in this case, you will have to convince me that you are competent to do so before I will allow you to proceed without a lawyer. I strongly suggest that you have a lawyer represent you in this case.” [Make a record on the defendant’s competence to represent him/herself, and then, as

appropriate, either proceed with the arraignment (by going to paragraph 10), or say “The arraignment in this case is scheduled for (schedule arraignment)” and go to paragraph 15.]

10. *[Ask the defendant] “Are you correctly named in the indictment/information, with your name spelled correctly [ask the following for Hispanic names only] and in the correct order?”*
11. *“Would you like to have the indictment/information formally read to you on the record?” [Choose either paragraph 11(a) or 11(b).]*
 - (a) *[If “yes,” then read the indictment/information to the defendant.]*
 - (b) *[If “no,” then ask defense counsel] “Do you waive formal reading of the indictment/information?”*
12. *[Ask the prosecutor] “Would you advise the defendant of the statutory penalties that would apply to him/her if (s)he were to be convicted on this/these charge(s)?”*
13. *[Ask the defendant] “How do you plead to Count I?” (Count II, etc.?)*
14. *“Your plea(s) of not guilty is/are accepted. This case is scheduled for trial before the Honorable (name of judge) on (date of trial). Does the government wish to stipulate to the language in the standard discovery stipulation available in this district? Does the defendant also wish to stipulate to this language?” [Choose either paragraph 14(a) or 14(b).]*
 - (a) *[If both say “yes,” then say] “Very well, the court will enter Judge (name of judge)’s standard trial-setting order, with the standard discovery stipulation language included in the order.” [Go to paragraph 15.]*
 - (b) *[If either says “no,” then say] “Very well, the court will enter Judge (name of judge)’s standard trial-setting order, but without*

the standard discovery stipulation language. Discovery in this case will be governed by the Federal Rules of Criminal Procedure and federal statutory and case law concerning discovery.” [Go to paragraph 15.]

15. [Ask the prosecutor] “Has the issue of detention been decided during an earlier proceeding?” [If “yes,” then this would conclude the hearing. If “no,” then go to paragraph 16]
16. [Ask the prosecutor] “Is there a detainer against the defendant?”
 - (a) [If “no,” then go to paragraph 17.]
 - (b) [If “yes,” then say] “Since it appears it would be futile to hold a detention hearing (since the defendant won’t be released from custody in any event), I hereby order the defendant detained without a hearing, although I’ll hold a detention hearing if the defendant’s attorney requests one.” [If an attorney for the defendant is present, ask him/her] “Do you want a detention hearing scheduled at this time?” [If “yes,” go to paragraph 17. If “no,” then this would conclude the hearing.]
17. “What’s the government’s position on detention?” [If the government does not ask for detention, then sign the bond and advise the defendant to go over the terms of the bond carefully with his/her attorney, and this would conclude the hearing. If the government asks for detention, then go to paragraph 18.]
18. [If the charge is for a **crime of violence or a drug charge**, go to paragraph 19 or 20, as appropriate. If the charge is **not for a crime of violence or a drug charge**, then ask] “Does the government believe it is entitled to a detention hearing?” [If “yes,” then ask] “What’s the response of defense counsel to the request for a detention hearing?”

(a) *[If the government is **not entitled to a detention hearing**, then sign the bond and advise the defendant to go over the terms of the bond carefully with his/her attorney. This would conclude the hearing.]*

(b) *[If the government is **entitled to a detention hearing**, then go to paragraph 19 or 20, as appropriate.]*

19. *[If the government is entitled to a detention hearing **and the defendant waives his/her right to a detention hearing** at this time, then order him/her detained. This would conclude the hearing.]*
20. *[If the government is entitled to a detention hearing, **and the defendant wants a detention hearing**, then schedule a detention hearing in three business days, or earlier if the government will agree to an earlier date, or for a later date if the defendant's attorney requests more time. This would conclude the hearing.]*